

REMARKS

The present response is submitted in response to the election/restriction requirement dated September 28, 2005, which set a one-month period for response, making a response due by October 28, 2005.

Claims 1-6 are pending in this application.

In the Office Action, the Applicants were required to elect a single species for prosecution on the merits, specifically, the embodiment described beginning with the second paragraph on page 8 and ending with the paragraph ending on the top of page 11 as well as in the second paragraph on page 13; the second embodiment as described beginning with the second paragraph on page 11 and ending with the last paragraph on page 12 as well as in the second paragraph on page 13; and the third embodiment as described in the first two paragraphs on page 13.

On Monday, October 17, 2005, the attorney for the Applicants spoke with the Examiner in this case, requesting clarification on the grounds for the election/restriction requirement so that the Applicants could be fully responsive to this requirement. Specifically, the attorney for the Applicants was unclear as to which claims of claims 1-6 the Examiner thought belonged to different "species", since as set forth in the disclosure, all of the features of each of claims 1-6 relate only to perhaps two embodiments, not species, of the present invention. The Examiner agreed to review the election requirement and call the Applicants' attorney the following day to discuss the issue.

However, the Applicants' attorney did not receive a return call. Therefore, this response has been prepared to address the election requirement without the requested further clarification from the Examiner.

The Applicants therefore elect to prosecute claims 1-2 and 4-6. This election is traversed.

The Applicants respectfully submit that the "species" identified on page 2 of the Office Action as "species 2 and 3" are merely further, related embodiments of the invention as described with regard to "species 1".

Specifically, "species 2" designated by the Examiner only specifies that the temperature of the heat accumulator is calculated using a model. As disclosed in the portion of the specification cited by the Examiner (page 11, second paragraph), "in an embodiment of the invention, the temperature of the heat accumulator can be calculated by means of a model. The model is composed of algorithms which use the detected parameter, such as for example the environmental temperature or the time of running of the internal combustion engine, to determine the temperature of the heat accumulator." (emphasis added).

That is, the first embodiment described on page 8-11 (the Examiner's "species 1") also MAY include the calculation of the temperature of the heat accumulator by means of this model. These two embodiments are not mutually exclusive, that is, separately defined inventions with no interrelationship.

Likewise, the embodiment designated by the Examiner as "species 3" again is another alternative embodiment in which the temperature of the heat

accumulator is detected directly by a sensor. Again, the first embodiment described on pages 8-11 ("species 1") MAY include the additional feature of this third embodiment ("species 3"), and again, the first and third embodiments are not mutually exclusive, or separate inventions with no relationship between the two embodiments.

The Applicants respectfully direct the Examiner's attention to MPEP 806.04(f), "Claims Restricted to Species, by Mutually Exclusive Characteristics", which sets forth the following:

"Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first." (emphasis added)

MPEP 808.01(a) "Species" defines that when there is no disclosure of relationship between species..., they are independent inventions."

Here, in the very portions of the specification cited by the Examiner, the disclosure clearly states the relationship between the defined embodiments. Again, the embodiment defined on pages 8-11 of the specification is obviously included in the second embodiment described beginning on page 12, second paragraph, which merely states that the temperature of the heat accumulator can be calculated with a mathematical model. The mathematical model ALONE is not defined as a separate invention, but is only added as a feature to the first described embodiment. That is, the mathematical model can be a part of the first embodiment, and would serve no useful purpose without the first embodiment.


Further, none of the claims 1-6 is claiming "a mathematical model" as a separate invention, nor is this model disclosed in the specification separately without reference to or incorporation of the first embodiment.

Likewise, the third embodiment (or "species") only adds to the first embodiment that a "temperature sensor" could be used. Again, this is merely another alternative embodiment; the temperature sensor is NOT defined in the disclosure as a separate invention apart from the first embodiment with no connection to this first embodiment. And again, none of claims 1-6 claims a temperature sensor as a separate invention, rather only as an additional element of the embodiment defined in claim 1.

The Applicants also wish to point out to the Examiner that the subject matter of the present application has been successfully prosecuted in the U.S. Patent Office in a related case as Application Serial No. 10/716,777 to issue as a patent on March 24, 2005. In that case, similarly structured claims were filed and prosecuted with NO election requirement, because there too, only ONE invention was disclosed with several alternative embodiments. The Applicants would encourage the Examiner to review the claims in that case, which are presented in a similar manner as claims 1-6 in the present case.

Based on the foregoing, the Applicants respectfully request withdrawal of the election requirement and substantive review of all of claims 1-6 in the present application. If any further issues remain to be resolved prior to this substantive review, the undersigned would very much welcome a telephone call to discuss these matters.

Respectfully submitted,



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